

DAVID M. LOUIE 2162
Attorney General of Hawaii

ROBYN M. KUWABE 3001
Deputy Attorney General
Department of Attorney
General, State of Hawaii
Labor Division
425 Queen Street
Honolulu, Hawaii 96813
Telephone: 586-1450

Attorneys for Complainant Director
of Labor and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of) CASE NO. OSH 2011-3
) (Inspection No. 313080244)
DIRECTOR, DEPARTMENT OF LABOR)
AND INDUSTRIAL RELATIONS,) STIPULATION AND SETTLEMENT
) AGREEMENT; EXHIBIT A; APPROVAL
Complainant,) AND ORDER
)
vs.)
)
HAWAIIAN ELECTRIC COMPANY,)
INC.,)
)
Respondent.)
)

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and Respondent HAWAIIAN ELECTRIC COMPANY, INC. ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about July 14, 2010 through November 5, 2010, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected

Respondent's workplace located at Wailawa Place and Street, Mililani, Hawaii 96789.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on November 29, 2010 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$35,000.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at Wailawa Place and Street, Mililani, Hawaii 96789.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has abated each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22.
5. The Citation is amended as follows:
 - a. Citation 1, Item 1 is affirmed in all respects.
 - b. Citation 1, Item 2 is deleted.

c. Citation 2, Item 2¹ is deleted.

6. The Director reduces the aggregate penalty from \$35,000.00 to \$5,000.00 which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

9. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.


10. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

11. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

DATED: Honolulu, Hawaii, June 3, 2011.

APPROVED AS TO FORM:

HAWAIIAN ELECTRIC COMPANY, INC.



JOSEPH P. VIOLA
Attorney for Respondent



RICK RAVELO, Safety Director

¹. There was no Citation 2, Item 1.

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS


ROBYN M. KUWABE
Deputy Attorney General


DWIGHT TAKAMINE

Attorney for Complainant Director
of Labor and Industrial Relations

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 437

DATED: June 3, 2011


JAMES B. NICHOLSON, Chair


SARAH R. HIRAKAMI, Member


NORMAN K. KATO II, Member

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7006 0100 0005 8250 9382

Citation and Notification of Penalty

To:

Hawaiian Electric Company Inc
and its successors
PO Box 2750
Honolulu, HI 96840-0001

Inspection Number: 313080244
Inspection Date(s): 07/14/2010- 11/05/2010
Issuance Date: 11/29/2010
OSHC ID: C3844
Optional Report No.: 00510
Inspection Type: Referral
Scope of Inspection: Comprehensive Inspection

Inspection Site:

Wailawa Pl & St
Mililani, HI 96789

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. **Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency.** Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification **must** be sent by you within **5 calendar days** of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

ABATEMENT CERTIFICATION

PEARL IMADA IBOSHI, DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Hawaiian Electric Company Inc
PO Box 2750
Honolulu, HI 96840-0001

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 11/29/2010. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.



Citation and Notification of Penalty

Company Name: Hawaiian Electric Company Inc
Inspection Site: Wailawa Pl & St, Mililani, HI 96789

Citation 1 Item 1 Type of Violation: **Serious**

HAR §12-60-2(b)(4)(C) was violated because:

The employer did not ensure that the two crew leaders were able to maintain the importance of the safety and health of the work area. There were two aerial bucket crews in their buckets on opposite sides of this pole completing the transfer of the high and secondary voltage lines from the old JP-2 pole to the new pole.

There were two linemen in truck #C377 aerial's bucket that were attempting to get to the phase "A" line because it was sagging and needed to be tightened up to eliminate some of the sagging in the line. This bucket crew also knew that in order to get to the phase "A" line on the opposite side of the pole, this crew had to approach the first over head line closest to them which was the phase "C" line then a second or a middle line called the Span guy line. This crew also noticed that there was also another secondary line below them so the aerial bucket operator decided to go in between the two lines in order for them to get to this phase "A" line.

Then as the bucket operator was maneuvering his aerial bucket towards the "A" phase line the span guy line got caught on the bucket. The bucket operator then grabbed the span guy wire with his bare hand to try to free the bucket as another part of his body made contact with a primary conductor when he got shocked and was seriously injured. It was later determined that the guy wire was in contact with a ground source.

The other aerial bucket truck's two man crew #C371 were on the opposite side of this pole and were also working on this pole but at a little lower position down on the pole. This crew could have safely corrected the sagging phase "A" line because there were no obstacles at all for them to encounter.

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313080244

Inspection Dates: 07/14/2010 - 11/05/2010

Issuance Date: 11/29/2010



Citation and Notification of Penalty

Company Name: Hawaiian Electric Company Inc

Inspection Site: Wailawa Pl & St, Mililani, HI 96789

§12-60-2(b)(4)(C) states "The employer shall ensure that the supervisors and managers understand their responsibilities under the safety and health program and their importance to the safety and health of the workplace. In particular, the training for managers and supervisors shall enable them to:

- (i) Recognize potential hazards;
- (ii) Maintain safety and health protection in the work area; and
- (iii) Reinforce employee training on the nature of the potential hazards and required protective measures."

Location: Job site

Date By Which Violation Must be Abated:

01/03/2011

Penalty:

\$ 5,000.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Hawaiian Electric Company Inc
Inspection Site: Wailawa Pl & St, Mililani, HI 96789

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.269(l)(2)(ii) [Refer to chapter 12-105, HAR] was violated because:

There were two linemen in truck #C377 aerial's bucket that were attempting to get to the phase "A" line because it was sagging and needed to be tightened up to eliminate some of the sagging in the line. This bucket crew also knew that in order to get to the phase "A" line on the opposite side of the pole, this crew had to approach the first over head line closest to them which was the phase "C" line then a second or a middle line called the Span guy line. This crew also noticed that there was also another secondary line below them so the aerial bucket operator decided to go in between the two lines in order for them to get to this phase "A" line.

Then as the bucket operator was maneuvering his aerial bucket towards the "A" phase line the span guy line got caught on the bucket. The bucket operator then grabbed the span guy wire with his bare hand to try to free the bucket as another part of his body made contact with a primary conductor when he got shocked and was seriously injured. It was later determined that the guy wire was in contact with a ground source.

The other aerial bucket truck's two man crew #C371 were on the opposite side of this pole and were also working on this pole but at a little lower position down on the pole. This crew could have safely corrected the sagging phase "A" line because there were no obstacles at all for them to encounter.

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313080244**Inspection Dates:** 07/14/2010 - 11/05/2010**Issuance Date:** 11/29/2010**Citation and Notification of Penalty****Company Name:** Hawaiian Electric Company Inc**Inspection Site:** Wailawa Pl & St, Mililani, HI 96789

29 CFR 1910.269(l)(2)(ii) states "Minimum approach distances. The employer shall ensure that no employee approaches or takes any conductive object closer to exposed energized parts than set forth in Table R-6 through Table R-10, unless:

- (i) The employee is insulated from the energized part (insulating gloves or insulating gloves and sleeves worn in accordance with paragraph (l)(3) of this section are considered insulation of the employee only with regard to the energized part upon which work is being performed), or
- (ii) The energized part is insulated from the employee and from any other conductive object at a different potential, or
- (iii) The employee is insulated from any other exposed conductive object, as during live-line bare-hand work."

Location: Job site

Date By Which Violation Must be Abated:

12/06/2010

Penalty:

\$ 5,000.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313080244

Inspection Dates: 07/14/2010 - 11/05/2010

Issuance Date: 11/29/2010



Citation and Notification of Penalty

Company Name: Hawaiian Electric Company Inc

Inspection Site: Wailawa Pl & St, Mililani, HI 96789

Citation 2 Item 1 Type of Violation: Repeat Serious

29 CFR 1910.269(l)(2)(i) [Refer to chapter 12-105, HAR] was violated because:

There were two aerial bucket crews in their buckets on opposite sides of this pole completing the transfer of the high and secondary voltage lines from the old JP-2 pole to the new pole.

There were two linemen in truck #C377 aerial's bucket that were attempting to get to the phase "A" line because it was sagging and needed to be tightened up to eliminate some of the sagging in the line. This bucket crew also knew that in order to get to the phase "A" line on the opposite side of the pole, this crew had to approach the first over head line closest to them which was the phase "C" line then a second or a middle line called the Span guy line. This crew also noticed that there was also another secondary line below them so the aerial bucket operator decided to go in between the two lines in order for them to get to this phase "A" line.

Then as the bucket operator was maneuvering his aerial bucket towards the "A" phase line the span guy line got caught on the bucket. The bucket operator then grabbed the span guy wire with his bare hand to try to free his bucket as another part of his body made contact with a primary conductor when he got shocked and was seriously injured. It was later determined that the guy wire was in contact with a ground source.

The other aerial bucket truck's two man crew #C371 were on the opposite side of this pole and was also working on this pole but at a little lower position down on the pole. This other crew could have safely corrected the sagging phase "A" line because there were no obstacles at all for them to encounter.

29 CFR 1910.269(l)(2)(i) states "Minimum approach distances. The employer shall ensure that no employee approaches or takes any conductive object closer to exposed energized parts than set forth in Table R-6 through Table R-10, unless:

- (i) The employee is insulated from the energized part (insulating gloves or insulating sleeves worn in accordance with paragraph (l)(3) of this section are considered insulation of the employee only with regard to the energized part upon which work is being performed), or"

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313080244

Inspection Dates: 07/14/2010 - 11/05/2010

Issuance Date: 11/29/2010



Citation and Notification of Penalty

Company Name: Hawaiian Electric Company Inc
Inspection Site: Wailawa Pl & St, Mililani, HI 96789

HAWAIIAN ELECTRIC CO INC WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD OR ITS EQUIVALENT STANDARD WHICH WAS CONTAINED IN HIOSH INSPECTION NUMBER 310393749 CITATION NUMBER 01 ITEM 1B ISSUED ON JUNE 13, 2008 WHICH BECAME A FINAL ORDER ON JANUARY 6, 2009

Location: Job site

Date By Which Violation Must be Abated:

12/06/2010

Penalty:

\$ 25,000.00

for 
PEARL IMADA IBOSHI
Director

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: Hawaiian Electric Company Inc
Inspection Site: Wailawa Pl & St, Mililani, HI 96789
Issuance Date: 11/29/2010

Summary of Penalties for Inspection Number 313080244

Citation 1, Serious	= \$ 10,000.00
Citation 2, Repeat Serious	= \$ 25,000.00
TOTAL PENALTIES	= \$ 35,000.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.